

ESTATE OF ALAN WAYNE CONNERS : Order Docketing and Dismissing
: Appeal
:
: Docket No. IBIA 93-46
:
: February 18, 1993

Appellant Christopher G. Connors seeks review of an order denying petition for rehearing entered in the estate of Alan Wayne Connors by Administrative Law Judge William E. Hammett. IP SA 409N 91.

The Board obtained a copy of the order from the Judge. The order is dated December 8, 1992. 43 CFR 4.320(a) provides that "[w]ithin 60 days from the date of the decision, an appellant shall file a written notice of appeal * * * with the Board * * *. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction." Judge Hammett's order advised the parties that "[t]his decision is final for the Department of the Interior unless a notice of appeal is filed with the * * * Board * * * in accordance with 4.320 et seq. within sixty days from the date hereof."

43 CFR 4.310(a) further provides that "[t]he effective date for filing a notice of appeal * * * with the Board * * * is the date of mailing * * *." The Board uses the postmark as proof of the date of mailing. Appellant's notice of appeal was postmarked February 11, 1993, more than 60 days after December 8, 1992. The Board takes notice of the fact that appellant is incarcerated and may not, therefore, be in control of the day on which items he places in the mail are actually mailed. Even giving appellant the advantage of that doubt, his notice of appeal is dated February 9, 1993, which was also more than 60 days after December 8, 1992. Under any scenario, appellant's notice of appeal is not timely, and must be dismissed. Estate of Edith Eli Watlamat, 23 IBIA 141 (1993); Estate of Ernest McBride, 20 IBIA 267 (1991).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Hammett's December 8, 1992, order is docketed and dismissed as untimely.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge